

Licensing Sub-Committee

Minutes of a Meeting of the Licensing Sub-Committee held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **7th December 2009**

Present:

Cllr. Feacey (Chairman);
Cllrs. Ellison, Norris

Also Present:

Licensing Manager, Legal Advisor, Member Services & Scrutiny Support Officer

319 Election of Chairman

Resolved:

That Councillor Feacey be elected as Chairman for this Meeting of the Licensing Sub-Committee.

320 Declarations of Interest

Councillor	Interest	Minute No.
Norris	Personal but not Prejudicial – Lived next to a Co-operative Convenience Store	322

321 Minutes

Resolved:

That the Minutes of the Meeting of this Sub-Committee held on the 9th October 2009 be approved and confirmed as a correct record.

322 Best One Convenience Store, 10 Cradlebridge Drive, Willesborough, Ashford, Kent, TN24 0RN – Application for a Premises Licence

The Chairman opened the meeting and welcomed all those present. Members confirmed that they had read the papers relating to the application. The Chairman explained the procedure to be followed at the meeting.

The Licensing Manager then gave a brief summary of his report. The application was for a premises licence. The applicant was Mr Sivarajah, and the premises were Best One Convenience Store, 10 Cradlebridge Drive, Willesborough, Ashford, Kent, TN24 0RN. The premises was a convenience store located in a cul-de-sac in a residential area. The premises did not currently sell alcohol and had applied for a premises licence to permit the selling of alcohol from 07.00 until 23.00 seven days a week. The application concerned only the sale of alcohol for consumption off the premises. The applicant had volunteered a number of conditions for the premises licence that

were replicated in Appendix F of the Agenda Papers. The conditions put forward by the Licensing Manager as taken from section P of the application form were as given within Appendix F of the Agenda Papers. Note. It was the responsibility of the Licensing Authority to prepare conditions that were “consistent” with the operating schedule (s.18). It was stressed that while a Licensing Authority had no discretion to add or modify a condition where there was no relevant representation, it may not issue a licence with conditions that were illegal.

No representations were received from the Responsible Authorities. 32 parties had made representations. A summary of these representations was provided in Appendix B of the Agenda Papers. Copies of the letters were contained in Appendix C of the Agenda Papers. A petition was contained at pages 51 and 52 of the Agenda, the petition was in objection to the licence but did not relate to the licensing objectives. Those who had signed the petition had been written to and asked to confirm that they were over 18 years of age, that they lived or worked in the ‘vicinity’ of the premises and to confirm that their representation related to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives, a copy of this letter was contained at page 53 of the Agenda. The Licensing Manager advised that less weight should be given to the petition than to the letter received detailing their objection in relation to the licensing objectives.

The representations had a number of common themes in terms of the licensing objectives and they could be summarised as follows:

- The prevention of public nuisance and the prevention of crime and disorder, in the forms of anti social behaviour and noise and litter pollution
- Some of the representations suggested that there was no “need” for a premises selling alcohol in the area due to the close proximity to other premises already selling alcohol. Members were made aware of the Secretary of State’s Guidance on this matter; “There can be confusion about the difference between “need” and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy. “Need” is a matter for planning committees and for the market.”

Members were advised that they may grant the licence with no modifications to the conditions to the licence, modify the conditions of the licence or reject the whole or part of the application. In addition to those matters outlined in the application’s operating schedule Members were advised that if they were minded to grant the application they may wish to consider the following conditions:

All Four Licensing Objectives

- a) The Licence Holder shall ensure that the premises has in place an internal CCTV system. The system will be maintained in working order and footage must be retained for a period of time to the satisfaction of the Police.

Prevention of Public Nuisance

- a) Prominent, clear notices shall be displayed at all exits requesting customers to respect the needs of local residents and leave the premises and the area quietly.
- b) The Licence Holder shall ensure that adequate waste receptacles are available for use by customers immediately outside the premises.
- c) The Licence Holder shall ensure that staff monitor the immediate vicinity of the premises and ensure that any litter is collected and disposed of appropriately.
- d) The licensee or a nominated representative shall receive and respond to complaints.

Mr Mitchener, the applicant's representative, addressed the Sub-Committee. He advised that the application was for a new premises licence to sell alcohol from 07.00 to 23.00 seven days a week. The application had been made in line with the relevant policy and guidelines. Employees would have one on one training and have to undertake a written test and sign a twelve point training statement. Refresher training would be undertaken every six months and a dedicated manual would be held at the site which would contain all of that information. The British Institute of Innkeeping had seen sight of the manual and were happy with it. The Challenge 21 Scheme would be implemented and upheld. External CCTV cameras were to be positioned across the front of the shop and to the side, he said that these were the only places they were allowed to cover as under the data protection act they were not allowed to cover shared areas.

He pointed out that no representations had been received from any of the Responsible Authorities. He then addressed each of the representations in turn.

- Mr and Mrs Davis had referred to past nuisance, there were four outlets close by, with two being on the main road, but none were realistically in the area. The premises were in a defined catchment area and granting the licence would not set a precedent.
- Mr Barton had also referred to past experience and felt that 23.00 was too late. Councillor Davidson had been aware of previous issues but none of the Responsible Authorities had made representations, and it was well known that the Police do become engaged in such matters.
- Mr Walker had made reference to increased problems with parking, the breaking into of the premises, litter and cheap alcohol prices. Mr Mitchener assured the Sub-Committee that if there was a real danger posed then the Police would have made representations. There was parking available to the left of the premises with six dedicated spaces. It was important to note that it was illegal for under eighteens to buy alcohol and for those over eighteen to buy alcohol for those under eighteen.
- Ms Mark-Evans had referred to the need for premises selling alcohol in this location, need was not a rationale and not a licensing matter.

- Tolburn Rybner had referred to crime and disorder and the temptation for secondary school pupils to purchase alcohol.
- Pamela Hole had questioned the need for such premises, the nearest premises with an alcohol licence was 0.4 miles from the premises in question.
- EA Bettles had made reference to a busy junction and the small cul-de-sac on which the premises was located, it was important to note that traffic was not a licensing objective.
- Mr Brown and Mr and Mrs Fincher had no objection to the premises itself but were concerned about the late opening hours.

He advised the Sub-Committee that the petition was unclear, it was well known that if the petition was produced by knocking on doors many would sign a petition just to get someone to leave. No evidence had been produced to support the fears expressed by the representations, there was a fear of what might be. The business would not survive if it was not supported. As part of the application they had indicated that they would place signs on the exits to the store asking patrons to leave the premises quietly.

In response to questions from Members Mr Mitchener advised that all members of staff would have to undertake the training regardless of their position. The old Justices Licences allowed the sale of alcohol until 23.00. The later hours would not be viable in the winter months and it was not proposed to open 07.00 to 23.00 all year round. The cost to vary a licence was the same as making a new application so they were applying for 07.00 to 23.00 but would start with 07.00 to 21.00 and in the summer may open 07.00 to 23.00.

Mr Rybner, an interested party, addressed the Sub-Committee, he advised Members that he lived at 7 Foxglove Road. He understood that selling alcohol would extend the turnover of the store and that the applicant would meet all of the conditions imposed, of that he had no doubts. The effects of selling alcohol were his concern, he did not have any evidence but alcohol related crime was on the increase in England and the surrounding area was mainly inhabited by elderly and middle-aged residents, with a few young families, it did not feel right and history showed what was likely to happen. There was a green area nearby with bushes and trees which were ideal places for youths to hide in. There was considerable litter in the surrounding area and he could not imagine that the granting of the licence would result in a reduction. He felt that cause and effect played a large part. Under the public safety objective many had experienced feeling threatened by someone when they were under the influence of alcohol. They would not know what would happen should the licence be granted but they could prevent it from happening. It would be a pity if there were no trouble if the licence were granted but should it be granted and there be issues it would be impossible to get it revoked. He concluded by saying that the time to act was now or never.

The Licensing Manager advised that under the Licensing Act 2003 a review process was introduced which allowed anyone who lived or worked in the vicinity of a premises or a Responsible Authority could call a licence in for review provided there was evidence that things had gone wrong. The applicant was responsible for what they could control. If they were found to have sold alcohol to anyone under the age of eighteen then their licence would be revoked. If the applicant sold alcohol

responsibly but those consuming the alcohol acted irresponsibly then that was outside of the regime, however some aspects could be taken into account in a review.

Mr Walker, an interested party, addressed the Sub-Committee. He advised that he lived at 14 Harvey Road. He questioned which publication the application had been placed in and asked if the Sub-Committee had visited the premises?

The Licensing Manager advised that the application for the license had appeared in the Kentish Express on 22nd October 2009. The Sub-Committee confirmed that they had all visited the premises.

Mr Walker advised that Ashford Borough Council had an ambiguous approach to alcohol. The Victoria Ward was subject to a Designated Public Places Order, if there was a problem in the town why then put the issue in Willesborough? He was concerned about the security of the shop, although the Police and Environmental Health had raised no objection to the licence had the Police visited the premises? He also questioned whether the two doors indicated on the plan would both be in use.

The Licensing Manager advised that he had accompanied the Police when they had visited the premises. Environmental Health were responsible for noise, litter and public safety.

Mr Mitchener advised that that the doors accessing Cradlebridge Drive were the customer access and the doors to the side were to the car park and used as a provision for goods in. He reiterated the positioning of the CCTV cameras.

Mr Walker drew attention to the predominance of advertisements advertising cheap alcohol, he felt that the premises would not be able to survive without selling alcohol. He was concerned that people would migrate to places where they could get cheap alcohol and the convenience store would be one such place. He assured the Sub-Committee that there had been issues in the area which the local CPSO had been involved with resolving and these had now been eliminated. With the granting of the licence there was a concern that there would be an increased risk of these issues reoccurring.

In response to Mr Walker's comments Mr Mitchener advised the Sub-Committee that they had considered the opening hours of the store and they would start out with reduced opening hours. Alcohol was an important part of a convenience store's business. Alcohol promotions in a convenience store were not even close to those offered in supermarkets. It was important to note that if there were problems then the Police would make representations.

The Legal Advisor advised the Sub-Committee that under the Licensing Act 2003 if problems relating to the sale of alcohol were found to be occurring then a review of the licence could be called.

Mr Mitchener then summed up. He advised the Sub-Committee that he accepted that the representations had been made in good faith and they had been taken on board. Representations could not be based on what may happen, there was a social responsibility on individuals and their actions. Representations had to be relevant and many had suggested that there was no need or demand for such a licence in the area, this was not an issue or relevant to the licensing objectives. No evidence had

been provided to support the representations. He then quoted an extract from the Thwaites case - High Court Decision (March 2008). He concluded by saying that the application should be granted and if any issues arose then there could be a review.

Mr Rybner then summed up. He advised the Sub-Committee that he was certain that if the licence were granted then the objectives and conditions would be upheld by the applicant. He concluded by saying that based on what might happen there could be a nuisance and the Police had proved to not be effective or efficient and he was concerned that they would be worse off.

Mr Walker summed up by saying that those supplied with alcohol could go somewhere else and commit a crime which would not be the fault of the shop owner, but it was well known that alcohol caused crime.

The Legal Advisor advised that the right to review was a new and strong right provided evidence was put forward.

The Sub-Committee then retired to make their decision.

On return the Legal Advisor read out the decision.

Resolved:

That the premises licence be granted and the sale of alcohol be permitted from:

0700 to 2300 seven days a week.

Subject to the conditions consistent with the operating schedule set out in Appendix F of the Licensing Manager's report, and the following additional conditions:-

- (i) The Licence Holder shall ensure that the premises has in place an internal CCTV system. The system will be maintained in working order and footage must be retained for a period of time to the satisfaction of the Police.**
- (ii) Prominent, clear notices shall be displayed at all exits requesting customers to respect the needs of local residents and leave the premises and the area quietly.**
- (iii) The Licence Holder will take all reasonable steps to ensure that adequate waste receptacles are available for use by customers immediately outside the premises, subject to the Council's approval**
- (iv) The Licence Holder shall ensure that staff monitor the immediate vicinity of the premises and ensure that any litter is collected and disposed of appropriately.**
- (v) The licensee or a nominated representative shall receive and respond to complaints.**

Objectors were reminded that if they experienced noise or litter nuisance then they should take this up with the Council's Environmental Health Officers and the Licensing Manager offered to help them in this regard.

The Legal Advisor then repeated the opportunity for a premises licence to be called in to review if there was evidence of problems directly related to the licensing objectives and informed those present of their right of appeal to the Magistrates' Court.

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